

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS (Boston)

IN RE: Robert L. Pingaro
Debtor

CASE NO. 03-11854-CJK
CHAPTER 13/SS.

Ameriquest Mortgage Company }
Movant/Plaintiff/Appellant }
v. }
Robert L. Pingaro }
Debtor/Defendant/Appellee }

CASE NO. 1:03-cv-12639-JLT

**OPPOSITION TO APPELLEE'S MOTION TO STAY PENDING
APPELLATE PANEL RULING**

Ameriquest Mortgage Company ("Ameriquest"), the Appellant in the above-captioned proceeding, hereby moves the U.S. District Court to deny the Appellee's Motion to Stay Pending Appellate Panel Ruling. Pursuant to Mass.R.A.P. 15(a), Ameriquest herein files its Opposition to the Appellee's Motion to Stay. In support of its opposition Ameriquest avers:

1. Abritt & Caruolo, PC was not served a copy of the Appellee's Motion to Stay Appeal Pending Appellate Panel Ruling as required by Mass.R.A.P. 13(a) et seq.;
2. Abritt & Caruolo, PC received a fax copy of the aforementioned motion on March 22, 2004 from Alexander L. Cataldo, PC, the attorney handling a B.A.P.

- proceeding (Case No. MB 04-002) on a separate appeal of an unrelated order by Judge Kenner;
3. The Appellee's motion states he has filed a motion or request with the Bankruptcy Appellate Panel to deny or stay this appeal. Ameriquest requests this Court to take judicial notice of Page 3 of the Appellee's Motion to Stay;
 4. The Bankruptcy Appellate Panel (BAP) appeal, Case No. MB 04-002 was filed after the present appeal, and any rulings made by the BAP will be inconsequential to this appeal¹;
 5. The Appellee has failed to state the legal basis to support his assertion that the BAP has jurisdiction to dismiss or otherwise stay the appeal now before this Court. Ameriquest is certainly unaware of any such authority;
 6. Although unclear, the Appellee appears to be requesting a stay or injunctive relief pursuant to Mass.R.A.P. 6(a), but Rule 6(a) is only applicable to orders issued by the lower courts; and
 7. On March 15, 2004, Judge Tauro granted Ameriquest's

¹ The issues before the BAP relate to the confirmation of the Chapter 13 Plan, where the issues before this Court relate to the modification of a secured lien without a hearing, and whether the Appellee is collaterally estopped from retrying facts previously decided. Moreover, the issues before the BAP have been briefed and oral arguments are scheduled for May 20, 2004. There is no way to economically consolidate the two appeals.

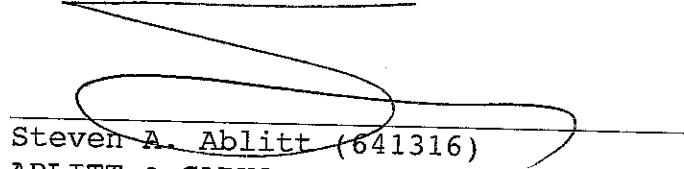
Motion For Leave to Appeal.

WHEREFORE;

Ameriquest Mortgage Company respectfully requests that this Court enter an order;

- i. Denying Robert L. Pingaro "Motion to Stay Pending Appellate Panel Ruling"; and
- ii. Afford Ameriquest Mortgage Company any further relief as may be necessary.

Respectfully submitted,
Ameriquest Mortgage Company
By its Attorneys


Steven A. Ablitt (641316)
ABLITT & CARUOLO, PC
333 North Avenue, 4th Floor
Wakefield, MA 01880
(781) 246-8995

DATE: March 30, 2004

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CERTIFICATE OF SERVICE OF AMERIQUEST MORTGAGE COMPANY'S OPPOSITION
TO APPELLEE'S MOTION TO STAY PENDING APPELLATE PANEL RULING

I, Steven A. Abblitt, do hereby certify under the pains and penalties of perjury that I have served a copy of the attached Opposition To Appellee's Motion to Stay on the following parties on this 30th day of March, 2004, via first class United States Mail, postage fully pre-paid and addressed to those parties listed below:

Robert Pingaro
258 Central Street
Saugus, MA 01960

Steven A. Abblitt, Esq.